

AMERICAN ARBITRATION ASSOCIATION

CASE NO.: 5930

In the Matter of Arbitration Between

CITY OF PHILADELPHIA

Employer

and

FRATERNAL ORDER OF POLICE,
LODGE NO. 5

Union

OPINION
AND
AWARD

ARBITRATOR:

Robert E. Light, mutually chosen
by the parties pursuant to the rules and regulations
of the American Arbitration Association

HEARING:

August 8, 2017 in Philadelphia, PA.

APPEARANCES:

For the City

Melissa Knight, Esq., Deputy City Solicitor
Lt. Robert Casselli, Police/Labor

For the Union

Marc Gelman, Esq. (Jennings Sigmond, PC)
John McGrody, FOP
Office Tamika Gross, Grievant

ISSUE:

Was there just cause for the discharge of Officer
Tamika Gross? If not, what shall be the remedy?

BACKGROUND

A hearing in this matter was held on August 8, 2017, in Philadelphia, Pennsylvania, with both sides present and duly represented by counsel and with both parties having full and complete opportunity to offer evidence and argument in support of their respective contentions. In lieu of filing post-hearing briefs, both counsel decided to make oral summations, after which time the hearing was declared closed.

The City of Philadelphia (hereinafter the "City" or the "Employer") and Philadelphia Lodge No. 5, Fraternal Order of Police (hereinafter the "Union") are signatories to a current collective bargaining agreement. A grievance was filed by the Union on behalf of Police Officer Tamika F. Gross, which grievance is dated June 24, 2014. (Joint Exhibit No. 2). That grievance alleged that Police Officer Gross was discharged without just cause and it requested that she be reinstated and be made whole. The matter proceeded through the course of the grievance procedure and when there was no resolution it was submitted to the undersigned for final and binding resolution.

FACTS

Ms. Tamika Gross, the grievant herein, was hired by the City on November 20, 2006 as a Police Officer and was discharged by the City on July 21, 2014. The reason for the discharge was violation of the City's Disciplinary Code (Joint Exhibit No. 4), with specific reference to Section 1-§021-10 which reads as follows:

Any incident, conduct, or course of conduct which indicates that an employee has little or no regard for his/her responsibility as a member of the Police Department.

(Joint Exhibit No. 4)

It provides that the penalty for a first offense is either 30 days or dismissal. In the instant case the City saw fit to discharge the grievant.

The facts indicate that the incident in question occurred on October 23, 2013, while the grievant was off duty. A fight ensued between T [REDACTED] H [REDACTED] and the grievant's daughter near the premises of the high school. The grievant was present throughout the fight but it appears that she took no steps to try to break it up. In fact, according to the testimony adduced, the grievant was there throughout and simply watched the fight. Presented at the hearing, was a video showing the incident in question. The fight was finally broken up by the school police.

At the hearing, Ms. Gross testified in her own behalf. She stated that at some point she did attempt to break up the fight, but that she had problems with her shoulder and she was reluctant to do so. At the hearing Commissioner Ross testified (at the time of the incident in question, he was then Deputy Commissioner) that he recommended discharge as the Commissioner's Direct Action. He viewed the video and it was his opinion that the grievant encouraged the fight and took no action to stop it. He testified that fighting is a crime and that police officers are sworn to break up a fight if it takes place in their presence.

POSITION OF THE CITY

The City takes the position that there was just cause for the termination of Officer Gross and it requests that the arbitrator sustain its position in that regard. It maintains that both the video and the picture of the incident is telling in that the grievant did absolutely nothing to stop the fight and that, as a sworn police officer, it was her duty to do so. It maintains that the grievant had an obligation to protect the community, which she failed to do. She was charged with conduct unbecoming and that her action (or inaction) on the day in question was certainly improper. It asks that the discharge be sustained and that the grievance be denied.

POSITION OF THE UNION

The Union, on the other hand, takes the position that there was not just cause for the termination of Ms. Gross and it requests that she be reinstated to her prior position with the City

and, in all other respects, be made whole. The Union argues that the City has simply not proven its case and that it has not proven this “crime” of endangering the welfare of a minor has been proven. It argues that the grievant was blameless in the incident and that her conduct was not inappropriate. It argues that she should be reinstated to her prior position and in other respects be made whole.

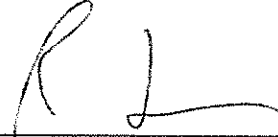
DISCUSSION

The arbitrator has carefully weighed all of the evidence in the case including the testimony of the witnesses at the hearing, the arguments of respective counsel as made at the hearing, the contract, and the exhibits prior to reaching his decision. Initially, there can be no argument that one of the sworn duties of a police officer is to protect and serve the community. Encouraging fighting, which this arbitrator finds the grievant did on the day in question, is the very antithesis of that duty. As the facts amply show, and as the video reveals, the grievant either “stood by” or “encouraged” the fighting which occurred while she simply watched. As Commissioner Ross testified, this City simply cannot condone the kind of conduct by a police officer which the grievant exhibited on the day in question. This arbitrator agrees with that statement. Put another way, this grievant failed miserably in her duty as a police officer for which, in the view of this arbitrator, the appropriate response by the City was that she be terminated. The arbitrator will not disturb the City’s action in that regard and he is therefore dismissing the grievance and upholding her termination.

Therefore, the undersigned having duly heard all of the proofs and allegations of the parties to this proceeding makes the following award:

AWARD

There was just cause for the discharge of Tamika Gross. Grievance denied.



ROBERT E. LIGHT, ARBITRATOR

AFFIRMATION

I, Robert E. Light, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Opinion and Award.

Dated: March 25, 2018



Robert E. Light, Arbitrator